

Coal Surface Mining Reclamation Regulations: Summary

The Department of Mines, Minerals and Energy (DMME) is amending the Coal Surface Mining Reclamation Regulations to incorporate changes made to the federal Office of Surface Mining regulations. These changes address requirements for coal mining companies participating in the Small Operators Assistance Program (SOAP) to:

1. Increase the total annual production from 100,000 to 300,000 tons on an annual basis, pro rated upon percentage of ownership, in order to be eligible for the SOAP.
2. Eliminate a requirement to provide the names of affected or adjacent property owners and locations of existing structures and developed water resources when filing for assistance.
3. Expand eligible program services and data requirements with respect to engineering, drilling, mapping, archeology or historical information, blasting, and information relating to the enhancement of environmental values.
4. Have more flexibility in the use of qualified subcontractors to conduct required laboratory services.

The amendments also change the definition of government-financed construction to include projects funded by a government entity at a level less than 50 percent when the project is an approved reclamation project under Title IV of the Federal Act

DMME is now amending its regulation to be consistent with these federal changes. This state regulatory action does not differ materially from the federal action. It uses the substantially identical language as the federal rules.

**Basis of Exemption to APA Article 2 for the
Virginia Coal Surface Mining Regulation
Abandoned Mined Land Reclamation
Small Operator Assistance Program (SOAP)**

The Department of Mines, Minerals and Energy (DMME) is submitting final amendments to the Registrar of Regulations under the exemption to Article 2 of the Administrative Process Act at §9-6.14:4.1 C (4) c of the Code of Virginia. This exemption states:

“C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter”.....

4. Regulations which...
 - (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar’s above determination shall be published in the Virginia Register not less than 30days prior to the effective date thereof”.

Background

The Commonwealth of Virginia has primacy in oversight of coal surface mining reclamation operations in Virginia. The federal Office of Surface Mining granted Virginia primacy effective December 15, 1981, after enactment of the Virginia Surface Mining Control and Reclamation Act of 1979, Chapter 19 of Title 45.1 of the Code of Virginia, and promulgation of the “Virginia Coal Surface Mining Reclamation Regulation”, 4 VAC 25-130.

The Office of Surface Mining found that Virginia’s law and regulations met the requirements for a state program as set forth in the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) and its accompanying federal regulations (30 CFR § 700.1 et seq.). According to § 503 [30 U.S.C. 1253]:

- “(a) Each State in which there are or may be conducted surface coal mining operations on non-Federal lands, and which wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, except as provided in sections 521 and 523 and Title IV of this Act, shall submit to the Secretary by the end of the eighteen month period beginning on the date of enactment of this Act, a State program which

demonstrates that such state has the capability of carrying out the provisions of this Act and meeting its purposes through....

(7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.”

This federal mandate requires that Virginia maintain its regulations consistent with the federal regulations.

Virginia’s law and regulations must remain in compliance with these federal and state requirements in order for the Commonwealth to retain primacy over the program. These amendments are being submitted to keep Virginia’s regulations consistent with the federal law and program.

The Registrar of Regulations has previously approved other changes to this regulation under this exemption. Such last exemption approved was published at 15:6 VA.R. 810-847, December 7, 1998.

Summary of the Amendment

On May 30, 1997, the federal Office of Surface Mining (OSM) issued a letter pursuant to 30 CFR 732.17(d) requiring the Department of Mines, Minerals, and Energy (DMME) to amend the Virginia Small Operator’s Assistance Program (SOAP). The letter required that by July 30, 1997, DMME provide the federal Office of Surface Mining Reclamation and Enforcement with a proposed amendment or a description and schedule for amendments to be proposed. The letter also asked for a schedule of enactment of any state legislative action that may be necessary.

In response, DMME advised by letter dated July 24, 1997, that a legislative amendment to the Virginia Act at 45.1-235 C would be necessary before DMME could promulgate the regulation required by the federal OSM. This amendment to the Code of Virginia was approved by the Governor on March 16, 1999.

On February 12, 1999, OSM revised the definition of “Government-financed construction” (4 VAC 25-130-700.5) to expand the eligibility for Federal funding for AML projects that involve the incidental extraction of coal. The Federal Register also established that the same definition in the Virginia Program must be revised before the expanded eligibility standard would apply to Virginia projects.

The proposed AML and SOAP amendment was provided to the Federal Office of Surface Mining on August 2, 1999 (Administrative Record No. VA-978). This was in response to changes made to the Federal SOAP regulations at 30 CFR 795 and 30 CFR 707.5. The announcement of receipt of the proposed amendment was made in the August 20, 1999 Federal Register (64 FR 45489). Public comment was invited on August 20, 1999. Additional amendments (revised) were submitted by the DMME on October 1, 1999, October 28, 1999 and on November 15, 1999 and a second comment period ensued. No comments were received on the amendment or the revision.

The amendment to the AML definition of Part 700.5 and to the Part 795 SOAP standard were approved as final by the Office of Surface Mining and published in the Federal Register, Volume 64, No. 247, page 72277.

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Statutory Authority

Sections 45.1-161.3 and 45.1-230 of the Code of Virginia provide the statutory authority to promulgate these regulations.